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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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In re SAMUEL S., a Person Coming Under  
the Juvenile Court Law.

PLACER COUNTY DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,

Plaintiff and Respondent,

v.

WENDY S.,

Defendant and Appellant.

C059006

(Super. Ct. No.  
53002576)

Samuel S. was declared a dependent of the juvenile court under section 300, subdivision (c), of the Welfare and Institutions Code<sup>1</sup> on the basis of an amended petition which alleged that Samuel was "suffering serious emotional damage, including but not limited to, severe anxiety evidenced by such symptoms as the minor striking himself in the face, headaches, and nausea, as a result of the actions of the minor's mother."

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The specific actions of the mother alleged to be causing Samuel to suffer serious emotional damage are as follows: "The mother has made numerous false claims to school officials, child protection services and medical professionals that the minor has been physically abused by the father, including abuse resulting in concussions and other serious head injuries. Numerous medical examinations have not found the minor sustained any such serious head injuries, or other physical injury, attributable to abuse by the father. The minor is aware of the allegations by the mother as the mother has made these claims in the minor's presence. The mother had the minor voluntarily admitted to an inpatient psychiatric facility [on] February 28, 2008, claiming the minor was 'hearing voices.' Despite a finding that the minor was not hearing voices, but rather was suffering from anxiety and repetitive thoughts, the mother has continued to make statements to the minor about him 'hearing voices.'"

Samuel was placed in the custody of his father, Scott S. Wendy S., Samuel's mother, appeals. She contends that the original and amended petitions do not allege facts sufficient to bring Samuel within section 300, subdivision (c), and that she was not provided adequate notice of the factual allegations leveled against her. We disagree and will affirm the judgment.

#### BACKGROUND

As this appeal presents a challenge to the sufficiency of the allegations contained in the petition, and not a challenge to the sufficiency of the evidence, we will dispense with a detailed recitation of the facts; a brief overview will suffice.

Samuel S. was three years old when his parents, Wendy and Scott, divorced in 2002. Although Wendy and Scott shared custody, Samuel lived primarily with Wendy and Scott had custody of Samuel every other weekend, alternating holidays, and a portion of the summer.

Beginning in 2003, Wendy leveled a series of accusations against Scott, alleging that Scott was physically abusing Samuel. Between January 2003 and March 2008, a total of 17 referrals consisting of 19 allegations of physical abuse were made to three child welfare agencies in Placer, El Dorado and Marin counties. Each of these referrals were found to be unfounded, inconclusive, or were "evaluated out."<sup>2</sup> Wendy also took Samuel to a number of medical professionals and therapists for headaches and nonexistent concussions, and informed these professionals, in Samuel's presence, that minor bruises on the boy's body were caused by physical abuse inflicted by Scott.

At a hearing for modification orders in Scott and Wendy's dissolution case in May 2005, Judge Suzanne Kingsbury admonished Wendy about the number and frequency of medical and therapy appointments to which she had taken Samuel. The court also admonished Wendy to refrain from making CPS referrals. While Wendy ceased making CPS referrals following this admonishment, she continued with the medical referrals. Wendy also informed

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<sup>2</sup> The juvenile court deemed the term "evaluated out" to mean that the allegation of abuse was either unfounded, inconclusive, or resolved by investigation.

Samuel's third grade teacher about his "'history' of abuse" at the hands of Scott and that she was also abused during their marriage.

Between January 14, 2008, and February 20, 2008, six referrals concerning Samuel's welfare were made to CPS and to Marin County's child welfare agency. These referrals were also either deemed unfounded or evaluated out. On February 25, 2008, Samuel was interviewed by Kim Brezniak of the Child Welfare Office in Marin County. Brezniak's report notes that Samuel informed her that "he sometimes hits himself in the head." When she asked why, Samuel explained that he is "scared that he is not going to go to heaven" because "he might not be remembering the truth" and is "scared that he is a liar." Samuel then stated that "he is not sure if his dad ever really hit him." Brezniak's report then notes that "[a]t this point[,] [Wendy] rushed in and said that Sam gets confused. She said that he has been so damaged that he has a hard time keeping things straight."

Five years of unsubstantiated allegations of physical abuse against Scott culminated in Wendy admitting Samuel to Sutter Center for Psychiatry on February 29, 2008. According to Wendy, Samuel was having "uncontrollable thoughts in his head that were telling him things that he didn't believe were true and he couldn't stop them." Samuel was also hitting himself. Samuel spent seven days at Sutter Center for Psychiatry. Samuel was treated by Dr. Robert L. Blanco, M.D., a Board Certified Child Psychiatrist. Samuel explained to Dr. Blanco that he "has

sentences in his mind 'about God and Jesus and the F word' which make him feel guilty and afraid that he will die." According to Dr. Blanco's report to Placer County CPS, Samuel's symptoms are likely attributable to the following: "[A]n Adjustment Disorder which is a reaction to stress that exceeds the individual's coping skills. The symptom of having thoughts which are 'sinful' and incur death could point to an obsessive compulsive disorder. However, diagnosis is best made after a child is in a supportive, stable environment for some period of time. I am concerned that Sam is being induced to have symptoms and/or being coached by Wendy. If that is occurring, it would constitute a stress and could cause symptoms of fear in general, fear of punishment in particular and anxiety. I would recommend removal from that environment as well [as] ongoing therapy to address the ill effects of such environment. I am fairly confident that Sam is comfortable with his father, is not afraid of him and is less symptomatic when with him while under observation at the hospital."

Samuel was taken into protective custody by officers from the Sacramento Police Department and placed with his father by the Placer County Department of Health and Human Services (HHS) on March 5, 2008. The same day, HHS filed a petition under section 300, subdivision (c). At the detention hearing, held March 7, 2008, the mother orally demurred to the adequacy of the original petition to state a cause of action. The court overruled the demurrer. Despite the fact that the demurrer to the original petition was overruled, the petition was amended

during the jurisdictional hearing on April 25, 2008, without objection by Wendy.

The amended petition alleged that Samuel was "suffering serious emotional damage, including but not limited to, severe anxiety evidenced by such symptoms as the minor striking himself in the face, headaches, and nausea, as a result of the actions of the minor's mother." The specific actions of the mother alleged to be causing Samuel to suffer serious emotional damage are as follows: "The mother has made numerous false claims to school officials, child protection services and medical professionals that the minor has been physically abused by the father, including abuse resulting in concussions and other serious head injuries. Numerous medical examinations have not found the minor sustained any such serious head injuries, or other physical injury, attributable to abuse by the father. The minor is aware of the allegations by the mother as the mother has made these claims in the minor's presence. The mother had the minor voluntarily admitted to an inpatient psychiatric facility [on] February 28, 2008, claiming the minor was 'hearing voices.' Despite a finding that the minor was not hearing voices, but rather was suffering from anxiety and repetitive thoughts, the mother has continued to make statements to the minor about him 'hearing voices.'"

Wendy then demurred to the amended petition as inadequate to support jurisdiction. The court again overruled the demurrer, ruling that the amended petition alleged facts "with sufficient clarity to show that, A, the minor is suffering

serious emotional damage, B, the mother has made false claims, and the minor is aware of the allegations of the mother, which is the causation, and the actions of the mother in that are sufficient to show that there is a nexus between her activities and the causation."

#### DISCUSSION

A petition to commence dependency proceedings in the juvenile court must contain "[a] concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted." (§ 332, subd. (f); *In re Alysha S.* (1996) 51 Cal.App.4th 393, 396 (*Alysha S.*)). This provision "does not require the pleader to regurgitate the contents of the social worker's report into a petition, it merely requires the pleading of essential facts establishing at least one ground of juvenile court jurisdiction." (*Alysha S.*, *supra*, 51 Cal.App.4th at pp. 399-400.) We construe well-pleaded facts in favor of the petition. (*Id.* at p. 397.)

The amended petition in this case was based on section 300, subdivision (c). A cause of action in dependency under this provision requires proof that "[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or

who has no parent or guardian capable of providing appropriate care." (§ 300, subd. (c).)

As was explained in *In re Alexander K.* (1993) 14 Cal.App.4th 549 (*Alexander K.*), this provision "sanctions intervention by the dependency system in two situations: (1) when parental action or inaction causes the emotional harm, i.e., when parental fault can be shown; and (2) when the child is suffering serious emotional damage due to no parental fault or neglect, but the parent or parents are unable themselves to provide adequate mental health treatment. [¶] In a situation involving parental 'fault,' the petitioner must prove three things: (1) the offending parental conduct; (2) causation; and (3) serious emotional harm or the risk thereof, as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior." (*Id.* at p. 557; see also *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1136, fn. 11.)

We have no trouble finding that the amended petition<sup>3</sup> in this case sufficiently alleges offending parental conduct causing serious emotional harm as evidenced by severe anxiety.

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<sup>3</sup> We note as a preliminary matter, that in addition to arguing that the allegations in the amended petition are insufficient to support jurisdiction, Wendy also contends that the allegations in the original petition are insufficient to support jurisdiction. However, the petition was amended during the jurisdictional hearing without objection by Wendy. Wendy then demurred to the amended petition as inadequate to support jurisdiction. The court again overruled the demurrer. As the amended petition superseded the original petition (Cal. Rules of Court, rule 5.524, subd. (d); Code Civ. Proc., § 469 et seq.; *In re David H.* (2008) 165 Cal.App.4th 1626, 1640 ["[A]mendments to



A

*Offending Parental Conduct*

The amended petition alleges that "[t]he mother has made numerous false claims to school officials, child protection services and medical professionals that the minor has been physically abused by the father, including abuse resulting in concussions and other serious head injuries. Numerous medical examinations have not found the minor sustained any such serious head injuries, or other physical injury, attributable to abuse by the father. The minor is aware of the allegations by the mother as the mother has made these claims in the minor's presence. The mother had the minor voluntarily admitted to an inpatient psychiatric facility [on] February 28, 2008, claiming the minor was 'hearing voices.' Despite a finding that the minor was not hearing voices, but rather was suffering from anxiety and repetitive thoughts, the mother has continued to make statements to the minor about him 'hearing voices.'"

Wendy asserts that this conduct "may be the actions of a concerned or even overly-concerned parent but they are not the actions of an abusive or exploitive parent who is maltreating her child." Wendy is quite mistaken. To assert that making numerous false allegations of physical abuse against Samuel's father in Samuel's presence does not amount to abusive or

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conform to proof are favored, and should not be denied unless the pleading as drafted prior to the proposed amendment would have misled the adversarial party to its prejudice.' [Citation.]"), we limit the scope of our analysis to the sufficiency of the amended petition.

exploitive conduct strains credulity. As the court explained in *Alexander K.*: “[T]he parental conduct branch of subdivision (c) seeks to protect against *abusive* behavior that results in severe emotional damage. We are not talking about run-of-the-mill flaws in our parenting styles—we are talking about abusive, neglectful and/or exploitive conduct toward a child which causes any of the serious symptoms identified in the statute. ‘Abuse’ means ‘[t]o ill-use or maltreat; to injure, wrong, or hurt.’ [Citation.]” (*Alexander K.*, *supra*, 14 Cal.App.4th at p. 559.)

Wendy’s protestations notwithstanding, the amended petition more than sufficiently alleges an unrelenting struggle by Wendy to convince various authorities and medical professionals, in Samuel’s presence, that Samuel is the victim of ongoing physical abuse by his father. But the amended petition does not stop there. It also alleges that in addition to the false allegations of abuse, Wendy also had Samuel admitted to a psychiatric facility because he was allegedly hearing voices, and then continued to tell Samuel that he was hearing these voices despite a diagnosis to the contrary. This conduct is not indicative of a “run-of-the-mill” flaw in Wendy’s parenting style. (*Alexander K.*, *supra*, 14 Cal.App.4th at p. 559.) Rather, this conduct constitutes abuse and is sufficient to bring Samuel within section 300, subdivision (c), where it causes “serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others[.]” (§ 300, subd. (c).)

B

*Causing Serious Emotional Harm as Evidenced by Severe Anxiety*

The amended petition also sufficiently alleges that Wendy's conduct has caused Samuel to suffer serious emotional harm as evidenced by severe anxiety. Specifically, the amended petition alleged that Samuel was "suffering serious emotional damage, including but not limited to, severe anxiety evidenced by such symptoms as the minor striking himself in the face, headaches, and nausea, as a result of the actions of the minor's mother."

Wendy asserts that "[a]llthough headaches, nausea and striking oneself in the head are distressing in a child and are certainly symptoms of stress and anxiety, they do not rise to the level of serious emotional damage required by the statute." She cites *In re John W.* (1996) 41 Cal.App.4th 961, 977 (*John W.*), for this proposition. *John W.* stands for no such proposition. There, the petition alleged that John was at risk of "'serious emotional damage'" because the parents' "ongoing custody disputes [had] created a tense, hostile and unpredictable environment.'" (*John W.*, *supra*, at p. 966.) The juvenile court ultimately terminated jurisdiction, but went on to split physical custody between the parents. (*Id.* at p. 964.) The Court of Appeal reversed the custody order and remanded to the family court, not the juvenile court, because "no basis for juvenile court jurisdiction existed." (*Id.* at p. 965.) As the court explained: "Child custody disputes between divorced parents, *neither of whom pose a risk of real detriment to the child*, should not be waged at taxpayers' expense in the juvenile

courts." (*Ibid.*) However, the court was careful to point out that "there still may be cases where, as happened in [*In re Anne P.* (1988) 199 Cal.App.3d 183], the "pure out and out hatred" that divorcing spouses sometimes display toward each other - with the child seen more as trophy than human being - juvenile court jurisdiction based on the ensuing severe emotional distress will be necessary. [Citation.]" (*Id.* at p. 975.)

*In re Anne P.* (1988) 199 Cal.App.3d 183 (*Anne P.*), is the better authority. There, Anne was trapped in the middle of a bitter custody battle being waged by her parents. The juvenile court exercised jurisdiction because Anne was "suffering from a severe psychological disturbance which was caused by the unrelenting struggle between her parents." (*Id.* at p. 199.) Evidence from several sources indicated that Anne had developed a "near pathological fear of men" and was "in danger of losing complete control and 'going off the deep end.'" (*Id.* at p. 191.) The Court of Appeal held that juvenile court jurisdiction was warranted. (*Id.* at pp. 200.)

In this case, unlike *John W.*, *supra*, 41 Cal.App.4th 961, there can be no doubt that the amended petition sufficiently alleges serious emotional harm as evidenced by severe anxiety within the meaning of subdivision (c). Indeed, it specifically alleges that Samuel is suffering from headaches and nausea and is striking himself in the face. This is precisely the sort of severe emotional distress that was present in *Anne P.*, and absent in *John W.*

Wendy also asserts that "the nexus between mother's actions and Sam's symptoms" is missing. On the contrary, the petition specifically alleges that Wendy's conduct is the cause of Samuel's severe emotional distress: "suffering serious emotional damage, including but not limited to, severe anxiety evidenced by such symptoms as the minor striking himself in the face, headaches, and nausea, *as a result of the actions of the minor's mother.*"

### C

#### *Due Process*

Finally, Wendy asserts that the "failure to draft a facially sufficient petition also negated her due process rights to adequate and actual notice of the factual allegations which could result in a juvenile court asserting jurisdiction over Sam." This contention also lacks merit.

"Fundamental to due process is the right to notice of the allegations upon which the deprivation of custody is predicated, and to notice of the time and place of the hearing. In other words, a parent is entitled to be apprised of the charges he must meet in order to prepare his case, and he must be given an opportunity to be heard and to cross-examine his accusers.' [Citation.] [¶] The courts have phrased the question as whether the parent was provided meaningful notice of the charges." (*In re Stephen W.* (1990) 221 Cal.App.3d 629, 640.)

In this case, the original petition was amended during the jurisdictional hearing. Accordingly, we will look to the original petition to determine whether Wendy was provided

meaningful notice of the charges. The original petition stated: "The minor is suffering serious emotional damage due to the actions [of] his mother and her attempts to gain sole custody of the minor from the father. The mother has made numerous claims to school officials, child protection[] services and medical professionals that the minor has been physically abused by the father and suffers from serious head injuries as a result of such physical abuse. However, numerous medical examinations, including an MRI, have shown no sign of any physical injury to the minor resulting from abuse. The minor is aware the mother has made these allegations about the father. The mother has taken the minor to the doctor on numerous occasions to have him examined for injuries, none of which have resulted in any finding of injury to the child. The mother had the minor voluntarily admitted to an inpatient psychiatric facility on February 28, 2008, claiming the minor was having hallucinations. The medical professionals at the facility diagnosed the minor with an Adjustment Disorder with anxiety as a result of the mother's actions and attempts to alienate the minor from his father and recommended the minor not be released to the custody of his mother." HHS also filed and served a declaration for protective custody warrant setting forth in minute detail the alleged actions of the mother, and that these actions were alleged to be the direct cause of significant injuries suffered

by Samuel. These allegations and the exhaustive declaration attached to the petition provided Wendy with meaningful notice of the charges leveled against her.

In sum, the amended petition alleges facts sufficient to bring Samuel within section 300, subdivision (c), and Wendy was provided adequate and actual notice of the factual allegations which could, and did, result in the juvenile court asserting jurisdiction over Samuel.

DISPOSITION

The judgment is affirmed.

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MORRISON, J.\*

We concur:

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DAVIS, Acting P. J.

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NICHOLSON, J.

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\* Retired Associate Justice of the Court of Appeal, Third Appellant District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.